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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/784,707	02/15/2001	Angelo Bastioli	13929/TBA	3139
38834	7590	02/03/2005	EXAMINER	
WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP 1250 CONNECTICUT AVENUE, NW SUITE 700 WASHINGTON, DC 20036			CHANG, VICTOR S	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 02/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/784,707

Applicant(s)

BASTIOLI ET AL.

Examiner

Victor S Chang

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 7, 8 and 10-45 is/are pending in the application.
- 4a) Of the above claim(s) 33-38 and 41-45 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 8, 10-32, 39 and 40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Introduction

1. The Examiner has carefully considered Applicants' amendments and remarks filed on 11/24/2005. Applicants' amendments to claim 1 has been entered.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Rejections not maintained are withdrawn. In particular, regarding the amount of amylose in the starch taught by prior art reference Altieri, since Applicants statement "Altieri does expressly state in its disclosure that the amylose content must be greater than 45 wt% ..." (Remarks, page 15, bottom paragraph) is correct, the Examiner notes that the reasoning of the basis of rejection in the prior Office action dated 7/26/2004 (page 3, first full paragraph) that "nowhere does Altieri expressly require that the amylose content must be greater than 45 wt%" is withdrawn.
4. This application contains claims 33-38 and 41-45 drawn to an invention nonelected with traverse in Amendment filed 3/6/2003. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Rejections Based on Prior Art

5. Claims 1-4, 7, 8, 10-32, 39, 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Altieri (US 5153037), generally as set forth in section 5 of Office action dated 7/26/2004, together with the following response to argument.

With respect to Applicants' argument "Altieri teaches use of a high amylose. More specifically, one containing at least 45% by weight of amylose ... Nowhere does Altieri teach that potato, wheat, maize or tapioca starch would provide a suitable starch for its invention" (Remarks, page 16, bottom paragraph), the Examiner notes that while the reasoning of the basis of rejection in the prior Office action dated 7/26/2004 is partially withdrawn, as set forth above, the Examiner repeats (see Office action dated 7/26/2004, page 3, first full paragraph, last three lines) that "if less than 45 wt% amylose is the point of novelty, the Examiner respectfully reminds Applicants that this limitation is absent from the claims of the instant invention." In particular, in response to Applicants argument "As shown in Starch Chemistry and Technology (pages 250-253) which has been made record ... these specific starches have amylose contents well below the 45% by weight taught in the description of Altieri ..." (Remarks, page 17 first paragraph), the Examiner would like to point out that the reference also clearly teaches "The ratio of amylose to amylopectin ... can be genetically controlled. Certain varieties of hybrid corn, such as Amylomaize, have starch with more than 80% amylose" (pages 251-252, bridging paragraph). As such, the reference appears to teach that the amylose content of a particular starch source (or plant) is not fixed, because it can be genetically controlled. Further, at least the hybrid corn Amylomaize reads on the maize

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as claimed, and it has more than 80% amylose content, Applicants' argument to the contrary (i.e., instantly claimed invention is directed a starch having less than 40 wt% amylose) notwithstanding.

Conclusion

6. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor S Chang whose telephone number is 571-272-1474. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel H Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

VSC
Victor S Chang
Examiner
Art Unit 1771

1/25/2005

Elizabeth M. Cole
ELIZABETH M. COLE
PRIMARY EXAMINER